IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 630 OF 2006

IN

PUBLIC INTEREST LITIGATION NO. 1232 OF 2004

Pratibha Naitthani.... ... ... Petitioner.

Versus

Union of India & Ors.... ... ... Respondents.

A N D

HBO Pacific Partners v.o.f. ... Applicant.

Mr. Ritesh Kulkarni with Mr. Dhaval Shah i/by M/s. A.R.A. Law for the Applicant.

Mr. M.M.Vashi for the Petitioner.

Mr. B.A.Desai, Addl.Solicitor General for Respondent No.1.

Mr.A.A.Kumbhakoni, Associate Advocate General, with Mr. P.M.Mokashi, AGP for State.

Mr. Dinesh Pednekar i/by M/s. PDS Legal for Respondent No.5.

Mr. Hemant Sahai for Respondent No.6.

Mr. V. Dhond i/by M/s.Crawford Bayley & Co.,

for Intervenors.

Mr. Agnes Baradia i/by M/s.Thakore Jariwala & Associates for the applicants.

CORAM: H. S. BEDI, C.J., &
V. M. KANADE, J.

DATED: NOVEMBER 15, 2006.

P.C.:

This motion is at the instance of HBO Pacific Partners v.o.f., praying for diverse reliefs, *inter alia,* for declaration that multiple Service Operators, cable operators and cable service providers are not prevented from carrying in cable service / Direct-to-Home service movies, having “U”, “U/A”, “V” or “V/UA” Certificate issued by C.B.F.C. By use of decoder supplied or to be supplied to them by Star Television Network Limited.

2. Mr. M.M.Vashi, the learned Counsel for the

petitioner, submitted that since the applicant - HBO Pacific Partners v.o.f. has given undertakings in terms of para 9 (A), (B) and (C) of the affidavit of Mr. Andrew David Jonathan Spink, the Constituted Attorney of the applicant, filed in support of the notice of motion, the petitioner has no objection.

3. Mr. B. A. Desai, the learned Solicitor General, submitted that the orders dated 21st December, 2005, 23rd August, 2006 and 31st August, 2006 are very clear and need no clarification and, therefore, the prayer made in the notice of motion is unnecessary. He, however, submitted that the broadcasters must start telecast of “U”, “U/A”, “V”, “V/UA”, for which no restrictions exist, forthwith as consumers / public cannot be held to ransom by these broadcasters.

4. We, accordingly, pass the following order, by way of ad-interim relief:-

(i) The applicant – broadcaster has filed an undertaking before this Court through their Constituted Attorney that they shall abide by the provisions of the Cable Television Networks (Regulation) Act, 1995, the Cable Television Networks Rules, 1994, as amended upto date and the orders passed by this Court on 21st December, 2005 and 23rd August, 2006 and shall not carry in cable service, movies / films for which restrictions exist in law and shall only carry the films / movies having “U” or “U/A” or “V” or “V/UA” certificate issued by Censor Board for Film Certification (CBFC) and shall broadcast contents in compliance with the provisions of Programme Code and Advertisement Code. The said undertakings contained in para 9 (A), (B) and (C) of the affidavit of Mr. Andrew David Jonathan Spink, the Constituted Attorney of the applicant, filed in support of the notice of motion, are accepted.

(ii) The pendency of the seizure and confiscation proceedings initiated against the various multi system service operators by the authorities, as of now, shall not preclude the multi system operators, cable operators and cable service providers from carrying in cable service, movies having “U”, “U/a”, “V” or “V/UA” certificate issued by CBFC by connecting the decoders other than those which are seized.

(iii) The applicant – broadcaster is also directed to furnish a list of movies to be telecast on its channel in advance to the Police authorities indicating that such films are certified as “U”, “U/a”, “V” or “V/UA” by the CBFC.

(iv) The authorised officer/s is/are entitled to proceed against the offending persons for breach of the provisions of the

Act, 1995, the Rules framed thereunder and the orders passed by this Court.

(v) The undertaking shall not preclude the applicant in challenging the order dated 23rd August, 2006, if so advised.

Sd/-

CHIEF JUSTICE

Sd/-

V.M.KANADE, J.